

ORIGINAL

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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In the Matter of )  
 )  
Implementation of ) MM Docket No. 94-34  
Commission's Equal )  
Employment Opportunity Rules )

To: The Commission

JOINT COMMENTS OF NAMED STATE BROADCASTERS ASSOCIATIONS

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## SUMMARY

The named State Broadcasters Associations fully support the Federal Communications Commission's goal of enhancing minority and female employment in the broadcast industry and appreciate the opportunity to comment on the Notice of Inquiry adopted on April 20, 1994, by the FCC. The Associations have a long history of fostering equal employment opportunity for minorities and women through a variety of methods, including sponsoring internships, conducting EEO seminars, creating recruiting resource lists, and publishing advisories.

Through the Notice, the Commission seeks comment on EEO practices pursuant to its current EEO rules and policies, and proposes several changes. The Associations urge the Commission to clarify certain ambiguous aspects of its rules and policies, and to take measures to ease the significant financial, time, and administrative burdens on broadcasters.

First, the Associations request that the Commission clarify several ambiguities that are raised by: (1) the 1994 Policy Statement on assessing forfeitures for EEO violations; (2) Section 73.2080 of the FCC's rules; and (3) the FCC's EEO forms. The Policy Statement imposes new recruiting requirements on broadcasters. However, much of the terminology used in the document, both in the base sanction and the upward adjustments, is not defined. As a result, broadcasters are not given a clear indication of what efforts are necessary to comply with the Policy Statement's standards. Similar ambiguities, such as the applicability of the EEO requirements to part-time employees, are present in §73.2080 and the EEO forms and must also be resolved.

Next, the Commission should rescind all forfeitures for equal employment opportunity violations that were issued since the February 1, 1994 enactment of the Policy Statement for three reasons. First, the Policy Statement constitutes an impermissible retroactive application of new regulations. The "guidelines" set forth in the document impose substantive changes in the Commission's EEO rules on broadcasters. Precedent is clear that unless there is a specific mandate from Congress, which the FCC is lacking, actions should be judged by the laws in force at the time the actions occurred. The Policy Statement instead judges and penalizes broadcasters by standards that were imposed, in some cases, more than four years after broadcasters filed renewal applications. Second, the Commission must use a "notice and comment" proceeding to enact these substantive revisions to EEO policy. Finally, the Policy Statement violates the principles of Melody Music which holds that the Commission must treat similarly situated licensees in a like manner. an examination of cases decided before and after the enactment of the Policy Statement reveals that licensees received radically different sanctions for similar conduct. Thus, the cases decided under Policy Statement must be vacated.

Third, the Commission should raise the "less than 5 full-time employee" reporting exemptions to "less than 15 full-time employees." Raising the reporting threshold for the Annual Employment Report (FCC Form 395-B), and the Model Equal Employment Opportunity Program Reports (FCC Forms 396, 396-A) will help alleviate the strain on broadcast stations that do not

have the resources to adequately deal with these reporting requirements.

Fourth, the FCC should reaffirm that it is not a second Federal Equal Employment Opportunity Commission. The FCC never intended to duplicate the efforts of the EEOC. Accordingly, the Commission should refer discrimination complaints to the EEOC. Finally, the FCC should issue a primer on equal employment opportunity similar to that which it issued for political time broadcasting.

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In the Matter of )  
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To: The Commission

### JOINT COMMENTS OF NAMED STATE BROADCASTERS ASSOCIATIONS

The Arizona Broadcasters Association, the California Broadcasters Association, the Connecticut Broadcasters Association, the Illinois Broadcasters Association, the Iowa Broadcasters Association, the Kansas Association of Broadcasters, the Kentucky Broadcasters Association, the Louisiana Association of Broadcasters, the Maine Association of Broadcasters, the Maryland/District of Columbia/Delaware Broadcasters Association, the Massachusetts Broadcasters Association, the Minnesota Broadcasters Association, the Mississippi Association of Broadcasters, the Missouri Broadcasters Association, the Nebraska Broadcasters Association, the New Hampshire Association of Broadcasters, the North Dakota Broadcasters Association, the Ohio Association of Broadcasters, the Oklahoma Association of Broadcasters, the Oregon Association of Broadcasters, the Utah Broadcasters Association, the Washington State Association of Broadcasters, and the Wisconsin Broadcasters Association

(collectively, the "Associations"), by their attorneys, hereby jointly comment upon the Notice of Inquiry adopted on April 20, 1994, by the Federal Communications Commission (the "FCC" or the "Commission") in the above-captioned proceeding.<sup>1/</sup>

## **I. INTRODUCTION**

1. Through its Notice, the FCC has sought comment on a broad array of issues concerning its EEO rules, policies and practices:

- (a) the effectiveness of its regulations in promoting equality of employment and promotion opportunities in the broadcast and cable industries;<sup>2/</sup>
- (b) questions and proposed changes to its EEO regulations and enforcement thereof;<sup>3/</sup> and
- (c) ways to further its EEO goals.<sup>4/</sup>

### **A. STATE BROADCASTERS ASSOCIATIONS SUPPORT FOR EQUAL OPPORTUNITY EMPLOYMENT**

2. The Associations are pleased to participate in this proceeding. It is important to stress at the outset that the state broadcasters associations fully support the FCC's goals underlying its EEO regulations. As these Joint Comments show,

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<sup>1/</sup> Implementation of Commission's Equal Employment Opportunity Rules, Notice of Inquiry, FCC 94-103 (released April 21, 1994) ("Notice").

<sup>2/</sup> Notice at para. 1.

<sup>3/</sup> Id.

<sup>4/</sup> Id.

the Associations maintain and carry out positive, continuing programs to "enhance access by minorities and women to increased employment opportunities"<sup>5/</sup> at broadcast stations nationwide. Among all the regulatory issues facing the broadcast industry, the subject of equal employment opportunity continues to be given the highest of priorities and the most frequent attention.

3. To assist their broadcast members in maintaining a high level of regulatory diligence, the Associations nationwide have, in cooperation with the National Association of Broadcasters (the "NAB") and others, conducted continuing education programs on the topic of EEO at annual conventions and special seminars. Indeed, the FCC has been very helpful in allowing its own staff to participate on these panels. The subject continues to be addressed in regular and special newsletters. All Associations urge their members to contact attorneys at the NAB, FCC and in private practice to insure a full awareness of and compliance with the EEO regulations. Some of the Associations have even set up legal hot lines to help their members on this subject and others. The NAB publishes a guideline on EEO which is comprised of 50 pages of text and 25 forms. The NAB is also conducting radio renewal seminars nationwide with an emphasis on EEO compliance.

4. Complementing the expanding efforts of the NAB to further equal employment opportunity throughout the broadcast industry, the Associations are also engaged in activities to

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5/ Notice at para. 1.



facilitate the recruitment of minorities and women. For example, under a program established by the New Hampshire Association of Broadcasters, individual member stations send to the association lists of minority and female referral sources they have found helpful. That information is aggregated and sent out to all member stations in an effort to enable them to broaden their recruitment outreach. The Illinois Broadcasters Association has set up an internship program for minorities. A special scholarship fund has been established to support these interns while they work at Illinois radio and television stations. Numerous minorities have participated in the program and many have been hired as full-time employees at stations in Illinois and beyond.

5. The Kansas Association of Broadcasters ("Kansas") has compiled a list of more than 350 referral sources for women and minorities that is available to its members, conducts workshops concerning EEO compliance, and prepares EEO advisories. In addition, Kansas has developed a scholarship program enabling minority high school students to attend the University of Kansas' Journalism Institute/Broadcast Workshop. Last year, 11 scholarships were given out, and 14 students received scholarships this year. The New Jersey Broadcasters Association has plans to hold three minority-targeted job fairs in September and October of this year, in all parts of New Jersey. The Michigan Association of Broadcasters ("Michigan") distributes a monthly job bank listing throughout the state and is in the process of compiling an employment referral source list. In

addition, Michigan employs five interns at its offices, 75% of whom are minority, and participates in college and high school minority career days. Further, Michigan holds regional seminars on EEO, and publishes EEO information regularly in its newsletter.

6. The Minnesota Broadcasters Association operates a free job placement service, and is planning an annual week-long educational seminar, in cooperation with the University of Minnesota School of Broadcast Journalism, for minorities interested in careers in communications. The Missouri Broadcasters Association ("Missouri") has, for the past 22 years, sponsored a minority workshop for high school seniors at the University of Missouri. In addition, Missouri is setting up a minority source guide, model EEO program and resume referral service for its members. The New York State Broadcasters Association ("New York") has, for the past 16 years, funded The Nelson A. Rockefeller Minority Intern Program which employs between 15 and 20 minority intern students who are placed at broadcast stations throughout the state. In addition, New York currently has plans underway to establish a minority job bank.

7. The North Dakota Broadcasters Association publishes information concerning equal employment opportunities in its newsletter. The Oklahoma Association of Broadcasters ("Oklahoma") conducts EEO seminars and has developed, and distributed to its members, ten forms designed to help broadcasters comply with the Commission's EEO rules. In addition, Oklahoma is in the process of compiling a recruitment

source list, and plans to participate in career fairs and regional career seminars. The Oregon Association of Broadcasters ("Oregon") publishes lists of minority recruitment sources, and serves as a clearing house for members to share minority and female recruiting methods that have proven to be effective. In addition, Oregon regularly publishes updates concerning the FCC's EEO rules and compliance activity in its monthly newsletter, and presented a seminar on EEO compliance at its annual conference.

8. The Tennessee Association of Broadcasters conducts seminars and publishes information in its newsletters concerning EEO compliance, has set up a job bank for referrals and has developed contact lists. The Texas Association of Broadcasters has formed an EEO Committee, and has written several articles and weekly faxes informing stations of EEO developments. The Washington State Association of Broadcasters' ("Washington") annual conference included a seminar on the 1994 Policy Statement, and its license renewal seminars include information on equal employment opportunity. In addition, Washington annually mails an EEO Compliance Review Worksheet and Workforce Statistics to its members, provides answers to EEO questions through its legal hot line, and publishes stories and legal tips concerning EEO compliance in its newsletter. The West Virginia Broadcasters Association ("West Virginia") is in the process of establishing a job bank, and is working with state colleges and universities to enhance recruitment efforts. In addition, West Virginia supplies its members with a list of various national minority associations and organizations.

9. As shown above, the effort is substantial and the broadcast industry commitment to EEO is unqualified. However, the Associations recognize that even more needs to be done to provide each broadcaster with ready access to the names and qualifications of minorities and women who have a serious interest in broadcasting. The NAB is in the process of expanding its efforts as a recruitment resource. The Associations are looking to do the same thing on a state by state basis.

#### **B. THE ADMINISTRATIVE BURDENS PLACED ON BROADCASTERS**

10. While the NAB and the Associations fully encourage the employment of women and minorities in broadcasting, broadcasters are suffering under heavy burdens imposed by §73.2080 of the Commission's rules, the EEO Policy Statement,<sup>6/</sup> and other employment laws. The numerous tasks that a broadcast licensee must accomplish in order to comply with the Commission's requirements are substantial and complex. A licensee must:

- (a) Develop a list of targeted referral sources for recruiting women and minorities;
- (b) Develop an initial working relationship with each source;
- (c) Draft and send a letter to each referral source every time that there is a job opening at the station, informing them of the necessary qualifications for the position;
- (d) Document how many referral sources were contacted for each job opening during the license term;

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6/ Standards for Assessing Forfeitures for Violations of the Broadcast EEO Rules, Policy Statement, 9 FCC Rcd 929 (1994) ("Policy Statement").

- (e) Document, for every job opening during the license term, whether each referral source produced any referrals;
- (f) Document the name, race/national origin and gender of every referral generated by each recruiting source for every job opening;
- (g) Periodically evaluate the recruitment results of each referral source to determine the source's effectiveness in generating minority and female applicants, and document such self-evaluation efforts;
- (h) Document whether and how often the licensee contacted each referral source to enhance the relationship and generate further referrals from the source;
- (i) Locate and develop relationships with new recruitment sources to enhance minority and female referrals;
- (j) Document any such efforts to generate new recruitment sources;
- (k) Draft a questionnaire, and appropriate cover letter, to be sent or given to applicants to determine their race/national origin, gender and referral source;
- (l) Send every applicant for every job vacancy during the license term the above-mentioned questionnaire;
- (m) Follow-up, with either a second letter or a telephone call, any applicants that have failed to return the questionnaire;
- (n) Be able to document the race/national origin, gender and referral source of every applicant, interviewee, and hire for each job vacancy;
- (o) Determine that an adequate number of women and minorities have applied for each job vacancy and are being interviewed;
- (p) Keep notes explaining why certain applicants were selected for interviews in case there is a question concerning why not enough minorities were interviewed;

- (q) Determine the exact number of applicants and interviewees for each job vacancy during the license term and keep sufficient records to document the information;
- (r) Determine the percentage of minority and female applicants and interviewees for each job vacancy during the license term, and keep sufficient records to document the information;
- (s) Keep track of every promotion that occurred during the license term, indicating whether the promotion went to a minority or a woman;
- (t) Be able to justify cases where promotions went to non-minorities; and
- (u) Continually self-assess the effectiveness of the recruiting efforts, and be able to document such self-assessment, including every effort made to enhance minority and female recruiting throughout the license term.

11. The cost of complying with the administrative burdens imposed by the Commission's EEO rules and policies is particularly high. The Texas Association of Broadcasters surveyed stations throughout the state concerning their EEO administrative costs. Based on a representative sample of the 695 radio and 124 television stations in Texas, the Texas Association determined that broadcasters spent an estimated combined **\$11.7 million** in staff time merely to comply with the EEO rules.

12. In addition to the financial drain on stations, there is a significant drain on employees' time and productivity. Smaller stations cannot hire additional employees to primarily work on managing and implementing stations' EEO programs. Employees are therefore forced to take on additional tasks in order to comply with the Commission's EEO rules and policies.

13. While the broadcast industry continues its multi-faceted, aggressive efforts to make the industry more attractive and inviting to minorities and women nationwide, the FCC's own efforts seem at cross purposes with that focus. As shown above, the regulations place a heavy staff time and paperwork burden on broadcasters, particularly on smaller broadcasters. The FCC's regulations in the area remain unclear and ambiguous in many material respects. The fines and other sanctions are often not proportionate to any shortcomings that may exist. Lastly, the heavy fines imposed by the FCC end up draining stations of the very resources they need to expand their recruitment of women and minorities and to maintain the incredibly detailed paperwork required by the FCC.

14. With this as background, the Associations urge the FCC to lessen the burdens placed on broadcasters through every avenue possible. Specifically, the Associations ask the Commission to:

- (a) remove the uncertainties which are still present in the EEO regulations identified herein;
- (b) rescind all forfeitures assessed since the February 1, 1994, adoption of the FCC's Policy Statement on EEO violations and decline to issue any new forfeitures until it: (1) clarifies the ambiguities present in the EEO rules and policies; (2) acts on the still pending Petition for Reconsideration of the 1987 EEO Report; and (3) acts on the still pending Petitions for Reconsideration of the EEO Policy Statement;

- (c) raise the "less than 5 full-time employees" reporting exemptions to "less than 15 full-time employees;"
- (d) reaffirm that the FCC is not another federal EEOC and follow the practice of referring all complaints and petitions regarding discrimination to the EEOC for disposition; and
- (e) issue an FCC Primer on EEO.

## **II. DISCUSSION**

### **A. THE FCC SHOULD REMOVE THE AMBIGUITIES DETAILED HEREIN AND ADOPT THE PROPOSED SOLUTIONS TO THE QUESTIONS PRESENTED BY THE NOTICE**

15. Section 73.2080 of the Commission's rules, the 1994 Policy Statement, and the various FCC forms relating to employment present areas of uncertainty to licensees that must be resolved. The Notice raises other issues that also need to be addressed.

#### **1. Issues Raised by the 1994 Policy Statement**

16. The Commission, in adopting the 1994 Policy Statement, has created several ambiguities that must be eliminated. The first major area of uncertainty arises from the language of the base sanction. The Commission stated that a \$12,500 base fine and reporting conditions will be imposed on broadcasters who fail "to recruit so as to attract an adequate pool of minority/female applicants or hires for at least 66% of all vacancies during the license term being reviewed." This statement is unclear in



several respects. First, what exactly does "the failure to recruit so as to attract" mean? The Commission needs to clarify whether broadcasters are expected simply to actively recruit women and minorities for 66% of the positions, or to have women and minority applicants in 66% of the applicant pools. Second, what does "adequate pool" mean? The Commission must explain whether a pool is adequate if there is at least one minority and female in each pool, or whether full parity with the female and minority representation in the labor force for a station's Metropolitan Statistical Area ("MSA") is required. Or is some "in between" measure is intended? Third, the base sanction refers to minority and female representation among applicants and hires, but does not refer to interviewees. However, Commission decisions released since the adoption of the EEO Policy Statement specifically refer to the number of minority and female interviewees. The Commission should specify whether it intends to continue to distinguish between applicants and interviewees, and if so, whether the "adequate pool" requirement applies to interviewees as well as applicants.

17. Fourth, also with regard to the base sanction, the Commission states that evidence of a station's failure to recruit will include inadequate record keeping and/or inadequate self-assessment throughout the license term. The Commission, however, does not define what it considers "inadequate" with regards to record keeping and/or self-assessment. How often does the FCC expect licensees to review their equal employment hiring efforts? Must licensees review the success of recruiting sources after

every job vacancy has been filled, or quarterly or yearly? This is not clear from the Policy Statement. Finally, with regard to recruiting minorities and women, the Commission does not indicate whether minority and female applicants that come from general recruitment sources will satisfy the recruiting standard. It appears from the language of the Policy Statement that a licensee that is receiving minority and female applicants from general recruiting sources must also use minority and female-specific recruiting sources. If a licensee is at 100% parity using general recruiting sources, the Commission should clarify that a licensee will be considered to have recruited an "adequate pool" even though the broadcaster did not use minority and female specific sources. The Commission should not penalize a broadcaster that has positive minority and female recruitment results from non-minority and non-female specific sources.

18. The phrase "adequate pool" poses further problems in that it is part of several of the upward adjustments: (1) having a large number of hiring opportunities or substantial hiring opportunities that do not translate into an "adequate pool" of minority and female applicants or employees; and (2) having a large pool of minorities and women in the labor force that did not translate into an "adequate pool" of applicants and hires. The same questions raised with regard to the base sanction are applicable here; namely, is an "adequate pool" one minority and one female applicant, full parity with the minority and female representation in the labor force, or some sliding scale in between? Also, the question of whether applicants and

interviewees are considered two separate groups must be resolved in the context of the upward adjustments.

19. Another area of major concern stems from the upward adjustment for prior EEO violations that resulted in previous sanctions or remedies. There is no indication as to whether EEO violations that resulted in a prior sanction or remedy must have been committed by the particular licensee currently facing sanctions, or whether, in the case of an assignment of license, the previous broadcaster's record will be applied to the current licensee's record. The Associations urge the Commission to clarify that an entirely distinct broadcast licensee begins with a clean slate with regards to sanctions for EEO violations, regardless of how long the new licensee held the license. If a prior licensee had EEO violations for which it received sanctions, then the licensee was suitably punished for its behavior, and it is patently unfair to hold a new licensee responsible. In the alternative, if the Commission determines that a prior licensee's actions will be held against a new licensee, the FCC should clearly indicate how long a new licensee must have control of the station's employment program in order to eradicate consideration of the previous licensee's record.

20. The next area of major concern that is applicable to the entire Policy Statement is the question of part-time employees. The Policy Statement does not clearly indicate whether the FCC intends to consider only full-time employees regardless of the full-time/part-time employment breakdown of a station, or whether there is some percentage of part-time

employees that will trigger review under the "other factors" that the Commission may take into account. For example, if a station has four full-time employees, and twenty-five part-time employees, would review of the licensee's employment program be limited to the full-time employees? Due to the often transient nature of part-time employees, and the burdens associated with managing an effective EEO program, the Associations suggest that only full-time employees should be considered for review of a licensee's EEO efforts.

21. The Commission also needs to define what is considered an "applicant." How should broadcasters classify people who send in unsolicited resumes? Are such people considered "applicants," and therefore trigger the requirement that the broadcaster find out the applicant's race/national origin, gender and referral source? The Associations suggest that unsolicited resumes be placed in a separate file and that such resumes be subject to the EEO requirements only if they are chosen for consideration for a particular job vacancy.

22. A related question is whether broadcasters may limit their recruiting efforts to methods reasonably expected to produce qualified applicants. It is not uncommon for a licensee to receive 200 responses to an advertisement. Is the broadcaster required to find out the race/national origin, gender, and referral source of every applicant, or may the licensee limit this inquiry to the 50 applicants that it determines to be the most qualified? The FCC must enumerate a finite limit on licensees' EEO efforts.

23. Another area of concern is the term "hiring opportunity" that is used in the upgrades. Is a promotion from one full-time position to another full-time position a "hiring opportunity?" What about hiring an independent contractor, temporary employee or part-time employee directly into a full-time position? The Commission should define "hiring opportunity" to allow for these types of "hires" without triggering the external recruiting requirements.

24. Finally, the Commission has indicated that it considers many factors when making the determination of whether to impose sanctions for EEO violations, and that it looks at the circumstances of each licensee. If there are factors that the Commission takes into consideration besides those discussed in the Policy Statement, these should be specifically enumerated.

## **2. Issues Raised by Section 73.2080 of the Commission's Rules**

25. Section 73.2080 of the Commission's rules raises several questions that are similar to those raised by the 1994 Policy Statement. The first issue arises from the lack of a definition of the word "qualified." In §73.2080(a), there is a general requirement that broadcasters shall afford equal employment opportunity to all "qualified" persons, and in §73.2080(b)(3), broadcasters are required to communicate their EEO program to all sources of "qualified" applicants. However, as with the 1994 Policy Statement, there is no explanation of the Commission's interpretation of "qualified." Based on the decisions released since the adoption of the new policy, it

appears that licensees must recruit from any source likely to produce any minority or female, whether they are qualified or not. The Associations urge the Commission to clarify its use of the word "qualified" and to allow broadcasters to limit their recruiting, without penalty, to those sources that are reasonably expected to produce candidates who are genuinely capable of successfully performing broadcast positions.

26. The second issue, already discussed above, concerns the status of part-time employees. Section 73.2080 does not expressly state whether the rule applies to recruiting for part-time vacancies, or only to full-time job openings. This is a needless uncertainty, and the Commission should expressly rule on this issue. As discussed above, the burdens on broadcasters resulting from implementing and managing an effective equal employment opportunity program are tremendous. These burdens would be significantly lessened if broadcasters' EEO efforts were definitively limited to full-time positions.

27. By defining "qualified" and limiting broadcasters' recruiting efforts accordingly, and by only requiring documentation for full-time job openings, the Commission will alleviate the administrative burdens placed on licensees. Even with these two changes, broadcasters will be generating sufficient documentation to provide the Commission with a clear and accurate view of licensees' minority and female recruiting and hiring efforts.

### 3. Issues Raised by the FCC's EEO Forms

28. The Notice questions whether FCC Form 396, which broadcasters must submit with license renewal applications, should be revised to request information only on full-time hires, or to request separate information for full and part-time hires. The Associations strongly urge the Commission to revise Form 396 to require information only on full-time hires. However, broadcasters should be given the option of submitting information on part-time hires as a means of getting "extra credit" for minority and female recruiting efforts that produce part-time applicants and hires.

29. The Commission should not require the submission of more detailed information on the renewal form. The detailed information proposed by the Notice is already fully covered by the Bilingual letter that the Commission sends broadcasters when there is a question about recruitment efforts.<sup>7/</sup> Adding this information would greatly increase the amount of time broadcasters would be required to spend to prepare the forms, and in effect would penalize those broadcasters whose recruitment programs are above reproach and would never receive a Bilingual letter.

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<sup>7/</sup> The three-year period that is traditionally covered by the Bilingual letter provides more than adequate documentation of licensees' equal employment opportunity programs and efforts. The FCC should not request information for the entire license term. Nor should the Commission conduct on-site audits. Broadcasters' responses to the Bilingual letter already provide the FCC with broad, detailed evidence concerning licensees' equal employment opportunity program.

30. The Commission also questions whether FCC Form 395-B, the Annual Employment Report, should be revised to collect information for 15, as opposed to nine, job categories. This is an unnecessary change. The categories are sufficiently comprehensive. Further, many broadcasters have developed record-keeping systems based on the current categories, and redefining them at this stage would only add to licensees' paperwork.

#### **4. Other Questions Raised in the Notice**

31. The Notice poses other questions, in addition to those discussed above, that must be addressed. The Commission inquires as to whether broadcasters, like cable operators, should be required to encourage minority and female entrepreneurs to conduct business with all parts of station operations. The Associations strongly urge that the FCC not adopt this suggestion. Broadcasters are already struggling under heavy financial and administrative burdens in order to comply with the minority and female recruiting requirements. Further, the Commission's primary aim in adopting its EEO rules was to encourage diversity in programming. There is, however, no logical nexus between requiring broadcasters to use minority and female-owned equipment suppliers and diversity in programming.

#### **B. THE FCC SHOULD RESCIND ALL FORFEITURES FOR EEO VIOLATIONS ISSUED SINCE FEBRUARY 1, 1994**

32. The Commission should rescind all forfeitures assessed since the February 1, 1994 release of its Policy Statement on EEO violations and decline to issue any new forfeitures until it: (1)



resolves the numerous ambiguities which were described in Section II. A. of this pleading; (2) acts on the still pending Petition for Reconsideration of the Commission's 1987 EEO Report; and (3) acts on the pending Petitions for Reconsideration of its Policy Statement. Until the Commission dispels the confusion that plagues broadcasters attempting to understand all aspects of the Commission's EEO requirements and acts on the pending Petitions, judging conduct and assessing punishment under rules and policies that remain ambiguous is unlawful and inappropriate.

**1. The Policy Statement Violates the Principles of Retroactivity**

33. Although the Policy Statement affects a substantive revision to the EEO rules, it is being applied retroactively, subjecting licensees to severe penalties for actions during license terms that began many years before the Policy Statement was even issued,<sup>8/</sup> and, indeed, even before the Commission's significant 1987 revision of its EEO rules which is still the subject of a long-pending petition for reconsideration.<sup>9/</sup> To impose sanctions against licensees for violating standards that

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8/ The Policy Statement has been invoked in a number of decisions involving licensees whose renewal applications covered license terms which ended well before the Policy Statement was adopted. See Page Enterprises, Inc., 9 FCC Rcd 1305 (1994) ("Page"); Eagle Radio, Inc., 9 FCC Rcd 836 (1994) ("Eagle Radio"); Roy H. Park Broadcasting of Washington, Inc., 9 FCC Rcd 860 (1994) ("Park"); Stauffer Communications, Inc., 9 FCC Rcd 879 (1994) ("Stauffer"); San Luis Obispo Limited Partnership, 9 FCC Rcd 894 (1994) ("San Luis Obispo").

9/ Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987) ["EEO Report"], petition for reconsideration pending.